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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,279	04/21/2005	Dieter Hermeling	29827/41149	8528

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MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

EXAMINER	
STEELE, JENNIFER A	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
05/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,279	HERMELING ET AL.	
	Examiner	Art Unit	
	JENNIFER STEELE	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-18 and 21-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-18 and 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 1-11, 13-18, and 21-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Whitmore (WO 01/56625) in view of Aberson et al (US 4,186,165). As amended, claim 12 has been cancelled and the limitation incorporated into claim 1. As claim 12 was rejected as being obvious over Whitmore in view of Aberson as Whitmore in view of Aberson teaches the claimed structure and is produced of a process that substantially comprises every limitation of the disclosed process. When a product claim contains a property or structure that appears to be induced by process steps, the claim can be rejected as being anticipated by or in the alternative, obvious over a reference that discloses product made by a process that substantially comprises

every limitation of the disclosed process. The previous Office Action rejection of 10/29/2007 is maintained.

2. Claim 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Whitmore (WO 01/56625) in view of Aberson et al (US 4,186,165) and Soerens (US 7115321). The previous Office Action of 10/29/2007 is maintained.

Response to Arguments

3. Applicant's arguments filed 2/20/2008 have been fully considered but they are not persuasive. The previous Office Action 35 USC 103(a) rejection to Whitmore in view of Aberson and Soerens are maintained.

4. Applicant argues that Examiner has failed to establish a prima facie case of obviousness that considers (a) predictability (b) an apparent reason to combine the known elements (c) a reasonable exception of success and (d) a teaching of all claimed elements. Applicant argues that WO '625 fails to teach a pressing temperature and pressing pressure in the claimed ranges and provides no apparent reason or incentive to modify the temperature and pressure. WO '625 does not disclose temperature and pressures for producing the absorbent article but does disclose that the absorbent article is produced by compressing the web, and at times more than once. The fact that WO '625 discloses a pressing pressure and temperature for testing the web indicates an understanding that the pressure and temperature of compression can affect an absorbent web with a superabsorbant polymer. Whereas WO'625 has the structure and materials of the claimed invention it would be reasonable to presume that WO'625

inherently has the properties of WO'625. However as the claims are also drawn to the process of making a material formed of a superabsorbent polymer and fibers, Aberson provides a finding that it is known in the art to optimize the pressure and temperature of a heating and compression process. While Aberson teaches an absorbent web with a hydrocolloid particulate that is described as a water swellable polymeric substance, including a polyacrylonitrile and copolymer of polyacrylamide and sodium acrylate (col. 5, lines 1-20). The current application describes the SAP as a polymer capable of absorbing water and is preferably based on polyacrylate. Aberson and WO'165 are both drawn to producing an absorbent article with a polymeric particulate added to assist in the absorbent properties. Therefore Aberson and WO'165 have the same structure, produced of the same materials and produced by the same process. If a technique for producing an absorbent article with an absorbent polymer using heat and pressure was taught by Aberson, a person of ordinary skill in the art would recognize that it would improve a similar structure. Wherein the WO'165 teaches the properties of current application, however not the improvement that results in from the process of making the product, the teachings of the process of Aberson provide a knowledge in the art that the process of Aberson could have been tried with a reasonable expectation of success.

Therefore the combination of WO'165 and Aberson teaches predictability as the combination teaches that optimizing the process conditions of making an absorbent article with an absorbent polymer would improve the properties of the absorbent article. The combination of WO'165 and Aberson teaches an apparent reason to combine the

known elements are both inventions are drawn to producing an absorbent article with improved properties for absorbing fluids and improving dimensional stability. As WO'165 teaches the in situ incorporation of a swellable polymer in an absorbent article and Aberson teaches process conditions for incorporating a swellable polymer into an absorbent web, the combination present findings that one of ordinary skill in the art could of combine the elements with a reasonable expectation of success. Finally the combination of WO'165 and Aberson teach all claimed elements except for the property of "an increase in thickness 60 days after compression is less than 100% based on the thickness directly after compression". As stated above, when the process steps of a product-by-process claim impart significant property or structure to the end product, the claim can be rejected as being obvious over a reference that discloses a product made by a process that reasonably substantially comprises every limitation of the claimed process.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER STEELE whose telephone number is (571)272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S./
Examiner, Art Unit 1794

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

5/22/2008